

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Sears Logistics Services, Inc.,

Plaintiff,

v.

Phoenix Warehouse,

Defendant.

Case No. 2:14-cv-999

Judge Watson

Magistrate Judge Kemp

**REPLY MEMORANDUM IN SUPPORT OF RENEWED MOTION TO
SUBSTITUTE PLAINTIFF**

Defendant Phoenix Warehouse's response (Doc. 36) does not oppose Plaintiff's request that Innovel Solutions, Inc. be named as the proper plaintiff in this case. The only disagreement is the proper procedure for accomplishing the change.

Plaintiff filed its motion because "Innovel Solutions, Inc." is the current name of the real party in interest. This issue implicates Federal Rule of Civil Procedure 17(a)(3), which provides:

The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be *substituted into* the action. *After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.*

(Emphasis added.)

Because Rule 17(a)(3) refers simply to "substitution" and not to the amendment of pleadings, Plaintiff believes that substitution can be accomplished by Court order and that an amended pleading is not necessary. An amended pleading should not be necessary because the name change does not alter the underlying events, the participants, or the allegations in the complaint in any way. In Plaintiff's view, the Court may grant Plaintiff's motion and direct the Clerk to alter the docket to reflect the fact that the sole plaintiff in this action is "Innovel

Solutions, Inc.” At that point, the action would “proceed[] as if it had been originally commenced by [Innovele Solutions, Inc.,] the real party in interest.” Fed. R. Civ. P. 17(a)(3). Nevertheless, if the Court determines that substitution requires an amended pleading, Plaintiff certainly is willing to file one.

Respectfully submitted,

s/ Gregory P. Mathews

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Certificate of Service

I certify that on October 16, 2015, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to:

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Attorney for Defendant Phoenix Warehouse

s/ Gregory P. Mathews

An Attorney for Plaintiff